

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte RAJENDRA S. YAVATKAR and JAMES E. TOGA

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MAILED

APR 28 2006

U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Appeal No. 2006-0384  
Application No. 09/041,979

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ON BRIEF

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Before CRAWFORD, LEVY, and NAPPI, Administrative Patent Judges.  
LEVY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-33, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellants' invention relates to ensuring quality of Service (QOS) for a multimedia call through call associated individual media stream bandwidth control (specification, page

1). As shown in figure 1, sub-net bandwidth manager (SBM) 104 manages bandwidth of network 100, including admission by traffic class and reservation bandwidth for the admitted traffic class (specification, page 5).

Claim 1 is representative of the invention, and is reproduced as follows:

1. A storage medium having stored therein a plurality of programming instructions executable by a processor, wherein when executed, the programming instructions implement a multi-media call application that effectuates quality of service (QOS) guarantee for a packet based multi-media call (CALL) through call associated individual media stream bandwidth control.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Drake, Jr., et al. (Drake)	5,461,611	Oct. 24, 1995
O'Neil et al. (O'Neil)	5,963,547	Oct. 5, 1999

Claims 1-6, 10-12 and 14-33 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Drake.

Claims 7-9 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Drake in view of O'Neil.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (mailed February 25, 2004) for the examiner's complete reasoning in support of the

2004) for the examiner's complete reasoning in support of the rejections, and to the brief (filed December 8, 2003) for the appellants' arguments thereagainst.

Only those arguments actually made by appellants have been considered in this decision. Arguments which appellants could have made but chose not to make in the brief have not been considered. See 37 CFR § 41.37(c)(1)(vii) (eff. Sept. 13, 2004).

#### OPINION

In reaching our decision in this appeal, we have carefully considered the subject matter on appeal, the rejections advanced by the examiner, and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellants' arguments set forth in the brief along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

Upon consideration of the record before us, we make the determinations which follow. We begin with the rejection of claims 1-6, 10-12 and 14-33 under 35 U.S.C. § 102(b) as being anticipated by Drake. We turn first to claim 1.

It is well settled that if a prior art device inherently possesses the capability of functioning in the manner claimed, anticipation exists whether there was a recognition that it could be used to perform the claimed function. See, e.g., In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997).

The examiner's position can be found on page 3 of the answer. Appellants assert (brief, page 8) that Drake does not disclose effecting a QOS guarantee through call associated individual stream bandwidth control. It is argued (brief, page 8) that notwithstanding the examiner's characterization of the reference, Drake does not disclose effecting a QOS guarantee through call associated individual stream bandwidth control, because although Drake discloses a stream identifier to identify each multimedia stream, Drake does not disclose individual stream bandwidth control. It is argued (id.) that Drake only discloses attributes which deal with aggregate bandwidths allocated to multiple reserved QOS data streams running through a bridge.

The examiner responds (answer, page 8) that:

The system disclosed by Drake, Jr.; et al. is for insure adequate QoS for each requested data stream. As can be seen on column 2, lines 37-41; column 4, lines 34-36, a requested multimedia data stream is determined for QoS (emphasis added). The above

argued various attributes in Drake, Jr.; et al. are used for determining bandwidth control for a particular data stream with a unique StreamID.

We agree. The system disclosed by Drake does ensure adequate QOS for each represented data stream. In addition, the attributes of Drake are used for determining bandwidth control for a particular data stream having a unique ID to the extent that a determination is made as to whether the components of the selected path satisfy the QOS values for a multimedia transmission (col. 2, lines 36-41). Further, Drake discloses that bandwidth management can also be called QOS management (col. 1, lines 55-57). However, in Drake, the overall function of allocator 20 is to receive the QOS request from source station 10, examine the resources of LAN 17 and determine if a path exists between the source station 10 and target station 29 which satisfies the QOS (col. 2, lines 50-55).

From our review of Drake, we find that the reference to the desired multimedia transmission is a reference to the media stream for the multi-media call. Drake does not conduct the multimedia call by using multiple-media streams for the call, as does appellants (specification, page 6). Nor does Drake allocate the reserved call level bandwidth to individual media streams of

the multi-media call, as does appellants (specification, page 8).

Accordingly, while we agree with the examiner (answer, page 8) that in Drake, an individual data stream among existing data streams in the transmission path requests a new bandwidth allocation (such as when changing from a one way client/server call to a two-way client/client call), and that QOS is implemented on the individual data stream after examining and identifying the Stream ID, Drake does not guaranty QOS for a packet based multimedia call through call associated individual media stream bandwidth control, as recited in claim 1.

From all of the above, we agree with appellants that Drake does not anticipate the language of claim 1. The rejection of claim 1 under 35 U.S.C. § 102(b) as being anticipated by Drake is reversed. As independent claims 10, 14, 20, 26 and 29 also recite the same or similar language, the rejection of claims 10, 14, 20, 26 and 29, as well as claims 2-6, 11, 12, 15-19, 21-25, 27, 28, and 30-33 under 35 U.S.C. § 102(b) is reversed.

We turn next to the rejection of claims 7-9 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Drake in view of O'Neil. We cannot sustain the rejection of claims 7-9 and 13 because O'Neil does not make up for the deficiencies of Drake.

## CONCLUSION

REVERSED

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